Department of Correction

Testimony of Brian K. Murphy, Acting Commissioner

Judiciary Committee

Raised Bill No. 221, *An Act Prohibiting the Disclosure of Employee Files to Inmates*

February 26, 2010

Good morning, Senator McDonald, Representative Lawlor and members of the Judiciary Committee. I am Brian K. Murphy, Acting Commissioner for the Department of Correction. I am here this morning to speak in strong support of Raised Bill No. 221, *An Act Prohibiting the Disclosure of Employee Files to Inmates*.

Inmate abuse of the Freedom of Information (FOI) process is a new and growing issue for the Department of Correction and other systems across the country. Eleven states have amended their FOI statutes in order to limit inmates' access to records. Washington State most recently amended their laws in March 2009 to limit inmate access. The Department respectfully requests passage of Raised Bill 221. The provisions of the bill would prohibit only the release of Department and DMHAS employee records to any person committed to the custody or supervision of DOC or confined to the Whiting Forensic Division of DMHAS.

The FOIC has taken the position that inmates use the FOI process as a means to air grievances about the correctional system. Inmates have appropriate avenues, both internally and externally, to file grievances. There are a number of administrative and legal remedies readily available to and regularly used by inmates to address complaints about the agency and the staff. Additionally, nothing in the FOIA requires the disclosure of personnel or similar files which would constitute an invasion of privacy. The FOIC interpretation of this statute is that staff personnel or similar files do not meet the personal privacy criteria and are public records. I don't believe it was the intent of the legislature to allow the FOIA to be used by the inmate population as a harassment and intimidation tool.

This language would provide essential statutory protection that would protect my staff from disclosure of personal information to inmates. The majority of the Department's employees are classified as hazardous duty and have regular ***daily, direct*** contact with the inmate population. They work with accused and sentenced offenders in correctional facilities and with offenders in the community. Even those employees who do not work directly with the offender population have exposure to and can be affected by those who are incarcerated through

their work in facilities and by decisions they may make in the course of their employment.

Gates and wires are security mechanisms to maintain order and safety but the most important tool is the correctional staff. Staff maintains control and order within the facilities and in the community through their interpersonal skills and professionalism.

The safety and security of staff and the facility are severely compromised when inmates have access to an employee's files – whether they are personnel, medical, disciplinary, affirmative action or security investigative files. Providing any information about an employee to an inmate undercuts the training that the Department provides for all new and current employees not to divulge information about themselves or another employee to an inmate. For the Department to be ordered to release such information to inmates places the Department in the untenable position of committing a violation of its own policy – something for which a staff person would certainly be disciplined and more likely be suspended or terminated from state service. Personal information that I have described about staff can be and is used to harass, manipulate and extort staff.

The following is an example of how an inmate uses FOI for harassment and intimidation purposes: Inmate T. has requested personnel or similar files on any staff member who issues him a disciplinary report, poor work report or shakes down his cell for contraband within the realm of their official duties. The staff member is then placed in the position to defend his personal information from the inmate population.

The Department is currently appealing eight FOIC decisions in which it was ordered to release employee files or information to inmates. In one case, *Taylor I* (2007),[1] the hearing officer recognized the danger in releasing the employee record and found the documents exempt under *C.G.S. §1-210(b)(18).*[2] He based his findings and decision on the testimony presented by me and based on my 26-year history as a correctional professional with special expertise in gang management.

Despite the hearing officer's findings, the full Commission stripped the decision of these findings, did not acknowledge my expert testimony, stated no evidence was presented to support the Department's position and ordered the release of the requested records. The Superior Court sustained the Department's appeal of this order.

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[1] *David Taylor v. Commissioner, State of Connecticut, Dept. of Corr.*, Docket #FIC 2006-502, (9/2/07)

[2] *C.G.S. 1-210(b)(18)* exempts "Records, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction..."

That same inmate brought another appeal requesting staff files (*Taylor II*).[3] In its final decision in this case the FOIC acknowledged that it lost the appeal of the first case (*Taylor I*). It nevertheless again ordered the release of staff files to the inmate. The FOIC maintained that its decision in *Taylor I* was correct and that, pending final resolution of *Taylor I* by the Appellate Court or Supreme Court, it was bound in *Taylor II* by the same standard of proof applied in the earlier decision. That case, too, is being appealed.

The FOIC's decision in *Taylor I* not only undermines Departmental policy and compromises safety and security within our state's correctional facilities, it ignored a prior Superior Court decision[4] that recognized the legislative intent of *C.G.S. Section 1-210(b)(18)*, which gives me, as Commissioner of Correction, the authority to deny disclosure of records that I have "reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility..."

There continues to be requests from the inmate population for staff personnel and similar files. The arguments presented by the Department and the testimony and witnesses put forth by the Department remain the same in all subsequent cases. The outcome from the Freedom of Information Commission does not change.

It is estimated that approximately $1 million per year is expended to respond to inmate FOI requests for the Department as well as other state agencies and municipalities. The Department believes that passage of this language would result in cost-savings to the state. In a recent inmate case, the staff cost to the state taxpayer for just the hearing process exceeded $10,000.

In order to continue to protect the safety of our community, staff and other inmates, we are calling upon the legislature to insure that inmates cannot obtain personal information of correctional staff.

I urge your support for Raised Bill No. 221. Passage of the bill will ensure not only the safety and surety of our correctional staff and their families but also our correctional facilities.

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[3] *David Taylor v. Commissioner, State of Connecticut, Dept. of Corr.*; *and State of Connecticut, Dept. of Corr.*, Docket #FIC 2008-029 (12/10/98)

[4] *Sylvia v. Department of Correction*, Docket # FIC 2008-382 (draft decision, final vote 3/25/09)